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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/506,417

08/31/2004

Emmanouil Domazakis

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EXAMINER

CHAWLA, JYOTI

ART UNIT

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1781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/506,417	Applicant(s) DOMAZAKIS, EMMANOUIL	
	Examiner JYOTI CHAWLA	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's submission and amendments filed on April 5, 2010 has been entered. Claims 6 and 8 have been amended. Claims 6-10 and 12 remain pending and are examined in the application.

Specification

Applicant's response to the new matter in the specification submitted 4/5/2010 has been considered. In the specification submitted 4/5/2010 applicant has arranged the previously disclosed subject matter including the original claims, according to 37 CFR 1.77(b) and merely added the matter to the body of specification the subject matter that was recited in the claims of 8/31/2004 , which is part of the original disclosure, thus no new matter has been added to the body of the specification. Applicant's amendment to specification dated 4/5/2010 has been entered.

Double Patenting

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

I) Claims 6-10 and 12 are rejected on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No.10/506,411, as discussed in previous office action of 3/19/09.

Applicant's remarks do not address double patenting rejection and the new limitations of "stable structure of olive oil and feta cheese" is not patentably distinct from the recitation of claim 7 of copending application 10/506411, step d) which recites that "feta cheese pieces are dispensed throughout the emulsion". Thus, the reasons provided in the previous office action still remain and rejection of claims 6-10 and 12 on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over claims 7-12 of copending Application No.10/506,411 is maintained for the reasons of record.

Claim Rejections - 35 USC § 112(First paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejection of claims 6-7, 9-10 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement of previous office action of 10/6/2009 has been withdrawn based on applicant's arguments.

Claim Rejections - 35 USC § 112(second paragraph)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Rejections of claims 6-10 and 12 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention made in the previous office action have been withdrawn based on applicant's amendments dated 4/5/2010.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 6-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (WO 02/065860) in view of the combination of Doerr et al (DD 211709 English Abstract only), Hans Drexel (DE 10065633 A1), Garderlander (EP 0505797 A), Ranken, and Mally (US4716821), hereinafter Mally.

Sonoma sausage and Bratwurst with cheese references have been relied upon as evidence that addition of feta cheese to sausage type products was known at the time of the invention.

The references and rejection are incorporated herein and as cited in the office action of 10/6/2009

Regarding applicant's amendments to claim 6, step e) stable structure of olive oil and feta cheese, Domazakis is relied upon as applied to claim 6 in the office action of 10/6/2009. Domazakis teaches that the "meats with olive oil that are produced according to this invention have an excellent stability as far as structure is concerned ", (Page3, lines 18-40) i.e., structural stability. Thus, Domazakis teaches structural stability of meat, milk protein and olive oil mixture as claimed instantly.

Amendment to claim 8, changes cheese particles to pieces which corrects antecedent basis rejection and addition of "with" in line 1 of claim 8 corrects a grammatical error and does not lend patentable distinction to claim 8 as rejected in the previous office action. Thus, claims remain rejected for reasons of record provided in the previous office action of 10/6/09.

Response to Arguments

Applicant's remarks about specification have been considered and responded in the office action above.

Applicant's arguments dated 4/5/2010 with respect to claims 6-10 and 12 over Domazakis in view of combination of references have been considered but are not persuasive.

Applicant's arguments are mainly directed at the fiber component of applicant's claims.

i) Applicant's argues against the examiner's position that plant materials generally include some fiber or cellulose and based on that reasoning some fiber would be

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present in the sausage product as taught by Domazakis (primary reference) because Domazakis teaches of adding plant material including vegetable based proteins and spices etc. Applicant's argument is "plant fibers... potentially present in spices or seasoning , are found in such small amounts, and even in trace amounts that they do not justify any functionality attributes, with respect to stability or textural characteristics" (Remarks, page 8, lines 10-15). This argument is not persuasive because in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "amount of plant fiber" and "functionality attributes, with respect to stability or textural characteristics" are not recited in the rejected claim(s) as such. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

ii) Applicant's arguments regarding Doerr and the type of cellulose and whether added as dry component or mixed with liquids (Pages 6, line 4 to page 8, line 9) have been fully considered have not been found persuasive.

Doerr teaches of microcrystalline cellulose (specific type of cellulose or fiber) for a specific purpose of reducing the fat content of the meat mixture in order to make low fat stuffing mix for sausage products, in a certain proportion, however, addition of MCC or any other fiber material, either as dry or wet mixture, in any amount does not teach against applicant's claims as recited because the rejected claims recite addition of "plant fibers" in general in no specific form (i.e., wet or dry) and in no specific amount. Thus applicant's arguments against Doerr are not persuasive. Once again, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "amount of plant fiber" and fiber form either solid or mixed with liquid) are not recited in the rejected claim(s) as such. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Further regarding Doerr's purpose of adding fiber to the meat mixture (reducing fat content) In response to applicant's argument that Doerr's reason of combining fiber is not the same as the applicant, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In the instant case Doerr is relied upon to show the conventionality of adding plant fiber material, such as, cellulose to meat mixtures. Plant fibers, such as, cellulose and inulin add bulk to the meat based product and also act as binding agents. Addition of fiber or non-digestible bulking agent also provides an added benefit of reducing the caloric value of the food to which such fibers are added, as taught by Doerr et al (English Abstract only). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Domazakis in view of Doerr and include plant based fiber, such as, microcrystalline cellulose. One of ordinary skill would have been motivated to modify Domazakis at least for the purpose of reducing the energy content of sausages as disclosed by Doerr.

iii) Applicant also argues against Drexel by stating that "there is no indication that the process followed in Drexel preserves the cheese particles intact" (Remarks, page 9, lines 1-3). This argument is also not persuasive because applicant has not claimed a size of cheese particle or piece and is arguing against the method steps of Drexel separately. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case Garderlander, Hans Drexel, Ranken and Mally teach the sausage product with feta cheese and Sonoma sausage provides evidence that sausages with feta cheese are known, as discussed above and in the previous office action.

Further, it is noted that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary

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reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Regarding applicant's argument that "there is no motivation in Domazakis to incorporate pieces of feta cheese into the meat based product (Remarks, page 7) as t paragraph to page 9). In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Domazakis teaches of addition of milk protein and cheese is a known source of milk proteins. Further Bratwurst, Sonoma sausage, Drexel all teach addition of cheese to sausage at least to enhance flavor of the sausage product. Thus, the motivation to add cheese is to provide nutritional benefit of milk protein while also providing organoleptic experience of cheese.

Further in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., particle size of cheese) are not recited in the rejected claim(s) as such. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Thus, applicant's arguments are not persuasive and rejections of claims 6-10 and 12 are maintained for reasons of record.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JC/
Examiner
Art Unit 1781

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1781